

REMARKS

Claims 1-8 and 10-12 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Machida '606 ("Machida"). Claims 1, 2 and 8 are independent. This rejection is respectfully traversed for the following reasons.

Each of claims 1, 2 and 8 embody an update program which starts running *in response to turning on a power source of the disk system*. Support for this feature can be found at page 4, lines 15-16 of Applicant's specification. Accordingly, the present invention can provide the capability of automatically updating the firmware of disk devices upon each start-up of the computer so as to provide the ability to ensure that the latest version of firmware is provided for *each* of the disk devices at all times. In contrast, the update process of Machida commences only when a disk device is being replaced. That is, Machida discloses performing the update process only in response to replacing a disk device so that commencement of the update process is independent of the power status of the disk system. In this regard, Machida is concerned only with ensuring that the *new* disk device has the latest firmware rather than *each* of the disk devices. In fact, Machida expressly discloses at col. 10, lines 14-21 that:

if a firmware version number of a disk device to be replaced is "0004" °
(Refer to FIG. 8D), it is determined that the firmware version number "0004" of the destination to be copied is higher than the firmware version number "0003" of the original disk device for copying (step S16), and for this reason this case does not require the copying operation. Accordingly, the processing shifts to step S18, and it is decided therein that the copying is not allowed.

That is, in the case where the new disk device has the latest version of firmware, Machida does not suggest updating each of the other disk device(s) to the latest version from the new disk device so that the other disk device(s) would maintain their earlier versions of

firmware relative to the new disk device. Again, Machida is directed to updating the firmware of the new disk device only.

In this regard, it is respectfully submitted that new claims 14 and 15 are patentable for reasons similar to those discussed above with respect to claims 1, 2 and 8. That is, Machida does not suggest determining the latest version of firmware from the firmware of the plurality of disk devices and updating the firmware of *each* of the plurality of disk devices to the latest version. Rather, the device of Machida merely updates the firmware of the *new disk device* to the latest version of firmware when needed. As mentioned above with respect to Machida, if the new disk device already has the latest version of firmware, NO updating takes place; whereas in the present invention, the firmware of the “new disk device” can be used to update the other disk device(s).

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed, either expressly or inherently (noting that “inherency may not be established by probabilities or possibilities”, *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999)), in a single prior art reference, *Akzo N.V. v. U.S. Int’l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the forgoing, it is submitted that Machida does not anticipate claims 1, 2, 8, 14 and 15, nor any claim dependent thereon.

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as claims 1, 2 and 8 are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully

submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

Based on all the foregoing, it is respectfully submitted that claims 1-8 and 10-12, 14 and 15 are patentable over Machida. Accordingly, it is respectfully requested that the rejection under 35 U.S.C. § 102 be withdrawn.

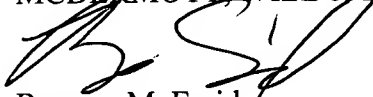
CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicant submits that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicant's attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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